

Thomas Ieuers, Esq; Appellant,

Sir William Barker, Bart. Respondent.

The Appellant's C A S E.

THE Respondent's late Father, *Sir William Barker, Bart.* being seized in Fee of Lands in the County of *Limerick*, in *Ireland*; and also of the Mannor of *Bocking*, in *Essex*, in *England*; did by Articles of Marriage dated the 23d of *June 1676*, (*int. al.*) agree to settle the said *Essex* Estate on *Elizabeth* (afterwards his Wife) for her Jointure, and after both his and her Deaths, to the Issue of their two Bodies, as by Council should be agreed on; and that within three Years after the Solemnization of that Marriage, He, the said *Sir William*, should purchase Lands in *England* of 300*l. per Annum* Value, and settle the same to the same Uses as the said Lands in *Essex*.

THAT *Sir William*, the Father, failing to perform the said Agreement, and the *Bocking* Estate being incumbered, the Lady *Barker*, by her next Friend, and the now *Sir William* eldest Son of that Marriage, the 10th of *March 1698*, filed their Bill in the Chancery of *Ireland* against the late *Sir William*, to compel him to a specifick Performance of the said Agreement.

THE late *Sir William* answered the said Bill, and having mortgaged Part of his said *Limerick* Estate for 2000*l.* to *Edward Riggs, Esq;* and another Part to Colonel *Piercy Freake* for 2000*l.* more, and having contracted several other Debts by Judgments and Bonds, and being desirous to clear both his *Limerick* Estate, and his Person from the said Debts, he declared in his Answer, He was willing that his *Limerick* Estate, or a sufficient Part thereof, should be sold, to the Intent that the Money raised thereby might be applied in the first Place to pay all his, the said *Sir William Barker's* Debts, to the amount of 7000*l.* and then to purchase 300 *l. per Annum* in *England*, according to the Marriage Articles.

THE Cause came on to be heard the 7th of *December 1702*, was re-heard the 27th of *Novem. 1707*, the 14th of *May 1708*, and again re-heard the 16th of *Novem. 1709*, when (the said *Elizabeth* being Dead) It was ordered and decreed, that the late *Sir William* should perform his Marriage Articles by dis-incumbering the said Mannor of *Bocking*, and purchasing 300*l. per Annum* more in *England*, and settle the same on the Respondent after his, the said late *Sir William's* Death; and that the *Limerick* Estate should be sold according to the late *Sir William's* own Offer by his Answer; and that his Debts, amounting to 7000*l.* should be first paid, and then, out of the Residue of the Purchase Money, 300*l. per Annum* should be bought in *England*, and that the Estate should be sold by two Masters of the said Court, and that they should receive Proposals for the same: And *Sir William* having in his Answer mentioned only such Part of the 7000*l.* as he had secured by Mortgages, or by Judgments confessed by him, it was proposed by the Lord Chancellor, as by a Memorandum of the Minutes taken on the said hearing appears, that the late *Sir William* should make an Affidavit to whom he owed the Remainder of the said 7000*l.* at the Time of putting in his Answer on the 21st of *May 1701*, (which Affidavit was afterwards made by *Sir William* accordingly.)

THE Respondent afterwards caused the said Decrees to be enrolled, and served the said *Sir William* with a Writ of Execution thereof, and proceeded against him to a Sequestration.

Sir William appealed from the said Decrees and Proceedings to your Lordships, and on hearing thereof, the 23d of *June 1724*, your Lordships affirmed the same.

THEREUPON two of the Masters, proceeded to a Sale of the said *Limerick* Estate, and a Particular thereof was made, and signed by them, containing a Rent-roll, the Tenants Names, and the Terms the same was let for, and the Quit-rent reserved and made payable thereout: And the Masters exposed the Estate to Sale, by Way of Cant, on the 27th of *July 1715*; and the Appellant having offered the Sum of 21410*l.* on depositing 10000*l.* in part of the said Purchase Money with the said Masters (pursuant to the Condition of the Sale) was declared, allowed and confirmed the best Bidder and Purchaser thereof at that Price.

THAT afterwards several Orders were made by the said Court, in Pursuance of the said Decrees, for Payment of divers Sums of Money by the Appellant out of the said Purchase Money, partly to *Sir William* himself, and partly to his Creditors, and particularly by the Order of the 23d of *December 1715*. After taking Notice of the two Mortgages to *Freake* and *Riggs*, for 4000*l.* principal Money and which were subsisting Incumbrances on the said Estate, and were directed to be paid out of the Purchase Money, it was ordered and directed, that after Payment of the said Incumbrances, the said *Sir William Barker* should have 3000*l.* out of the said Purchase Money, according to his Answer, with Interest for the same, from the Time of making the first Decree, in 1702: Whereupon, pursuant to the said Order, the said *Sir William Barker*

having

William Barker's Marriage Articles, June 23. 1676.

Respondent and his Mother's Bill against late Sir William filed March 10. 1698.

The late Sir William's Answer filed May 21. 1701.

The Cause heard Nov. 7. 1702, and afterwards re-heard Nov. 27. 1707, May 14. 1708, and Nov. 16. 1709.

Respondent enrolled the Decrees.

The late Sir William appealed, and the 23d of June 1714 the Decrees were affirmed. The Estate sold by the Masters, pursuant to the said Decrees, the 27th of July 1715.

Orders made for Payment of the Incumbrances and other Debts of the late Sir William mentioned in his Answer.

having given Letters of Attorney to *Darby Egan* to receive the said 3000*l.* and Interest of the Appellant: The Appellant did thereupon, in the Years 1716, 1717, and 1718, actually pay to the said *Darby Egan*, pursuant to the said Orders, and said Letters of Attorney, several Sums, in the whole amounting to 3031*l.* in part of the said 3000*l.* and Interest, and the said Sum of 1000*l.* deposited by the Appellant, was by special Orders of the said Court of Chancery paid out to some of the said Sir *William's* said Creditors; particularly named in the said Answer (*viz.*) 699*l.* 12*s.* 2*d.* part thereof to *Mary Roberts*, and 300*l.* 7*s.* 10*d.* to *Alexander Goodal*, all which appears by the Report of Doctor *Lindon*, one of the Masters of the said Court, dated the 9th of February 1725; and the Appellant paid likewise, pursuant to the said Order, several other Sums, in the whole amounting to 10177*l.* Sterling, including the said 1000*l.* deposit. And the Appellant having afterwards discovered that he had been deceived and imposed on in the said Sale, for that it manifestly appeared that the Leases were longer by ten Years, and the Lands liable to a greater Quit-rent, and set at Rack-rents less by near 300*l.* per Annum than was mentioned in the said Particulars, by which the said Estate was sold, and on the Credit of which the Appellant became Purchaser. He therefore exhibited a Bill in the said Court of Chancery against the Respondent and his said late Father, for Relief as to the Fraud and Imposition, by the Misrepresentation of the Value of the said Estate.

Appellant filed his Bill against the late Sir *William* and Respondent.

THE late Sir *William* being conscious that the Appellant was very much imposed on and injured by such Fraud in the Manner of selling the said Estate, and (looking upon himself intitled to the Residue of the Purchase Money, after paying the 7000*l.* Debts and Interest, and purchasing 300*l.* per Annum in England, pursuant to the Decrees) prevailed on the Appellant to accept of such Residue as a Satisfaction, though it was not near adequate to the Loss the Appellant sustained on Account of such Misrepresentation.

THE now Respondent's Answer. THAT the Respondent put in his Answer to the said Bill, and thereby offered to allow such Sums of Money, with Interest, as the Appellant paid in Part of the 7000*l.* Debts; and his Father happening to depart this Life the 17th of May 1719, he filed a Cross-Bill against the Appellant in the said Court, setting forth the said affirmed Decrees, and that he was ready to allow so much of the said Debts as the Appellant had paid, as also Interest for the same.

May the 17th 1719 the late Sir *William* died, and soon afterwards the Respondent filed his Cross-Bill against the Appellant.

June the 27th 1723, both Causes were heard, and the Appellant decreed Satisfaction in part.

THAT both Causes were afterwards heard the 27th of June 1723, and the said Surplus was decreed to the Appellant, as a Satisfaction for the Damages by reason of the said Misrepresentation; and on the Respondent's Cross-Bill it was decreed, that he should have 300*l.* per Annum purchased for him in England, and the Arrears from the Death of his said Father, with English Interest for the same.

Respondent appealed from the said Decrees.

FROM both which last mentioned Decrees and Proceedings of the said Court of Chancery of Ireland, the Respondent Appealed, and on hearing thereof, on the 18th of December 1724, Your Lordships were pleased (*int. al.*) to Order and Adjudge, that the Respondent should have in lieu of 500*l.* per Annum in Bocking, and the said 300*l.* per Annum, from the Death of the said Respondent's Father 17600*l.* with the Arrears of the said 500 and 300*l.* per annum, from the Death of the Respondents Father and that towards Satisfaction thereof, so much of the Purchase Money of the said *Limerick* Estate, as exceeds what the Appellant hath really paid to Creditors of the said Sir *William Barker* the Father in pursuance of the said Decrees, affirmed by your Lordships as aforesaid in discharge of such Debts as were owing by the said Sir *William Barker* the Father and Legally affected, the said Estate at the time of putting in his Answer, should be paid to the Respondent with Irish Interest for the same, at such time and place in London, as the Lord Chancellor of Ireland should at the Respondent's Request nominate and appoint; or in default thereof, that the Appellant and every one deriving under him, should convey the said Estate to the Respondent. And that the said Court of Chancery should Order an Account to be taken of what hath been really and bona fide paid by the Appellant in pursuance of the said Decrees affirmed in discharge of such Debts of the said Sir *William* the Father, as were owing by him and affected the said *Limerick* Estate at the time of putting in his Answer, and did Order the Respondent's Costs, for all the Proceedings in the said Court subsequent to your Lordships said Affirmance in 1714, to be taxed, and that the Appellant should pay the same.

An account directed to be taken by the Chancery of Ireland.

Doctor *Lindon*, the Master to whom it was referred made his Report 9. of Feb. 1715.

Certified the Appellant paid in part of his purchase Money pursuant to the Decrees 10177*l.*

Appellant took Exceptions to the said Report and on arguing thereof before the Ld. Chancellor he disallowed the Exceptions, and confirmed the same Report.

IN Pursuance of this Decree, *Edward Lindon* Esq; (one of the Masters of the said Court,) proceeded to take the said Account: And after a long Examination of Witnesses, (the Respondent having put the Appellant under a Necessity of proving the very Money which he received himself) on the 9th of February 1725, made his Report, and thereby, certified, that it appeared by sufficient Proofs before him, that the Appellant did, Pursuant to special Orders of the said Court really pay, to the said late Sir *William* and his Creditors, pursuant to the said affirmed Decrees, the several Sums in his said Report particularly mentioned and set forth, amounting in the whole to the said Sum of 10177*l.*

AND the Master having by his said Report, also stated several Bond Debts of the said late Sir *William Barkers*, which had been paid out of the Money paid by the Appellant to *Egan*, and the said Bonds were produced by the Appellant, yet the Master submitted it to the Court what Allowances should be given the Appellant for such Debts: To which Report both Respondent and Appellant excepted, and on arguing the Exceptions the 5th of May 1726, the Court directed the Masters to allow no other Debts paid then what Legally affected, the *Limerick* Estate, at the time of putting in the said late Sir *William's* said Answer; and the Master having made a second Report, whereby the Appellant was only allowed 6841*l.* 2*s.* 2*d.* whereas

Appellant has appealed from the Report, and Order made for confirming the same.

whereas he paid 10177 *l.* as aforesaid, a hearing was had thereon the 22d of February 1726, when the Court refused to give the Appellant any Allowance for the Interest of the said 1000 *l.* paid the said Masters and for several other Sums of Money reported to be paid by the Appellant, between the time of such payment and the time of his getting Possession, though it appeared by sufficient Proofs, that the Respondent received the Rents and Profits of the whole Estate during that Time, or to make the Appellant any manner of Satisfaction for 300 *l.* 7 *s.* 10 *d.* part of the aforesaid 1000 *l.* deposited by the Appellant, in the Hands of the said Masters, and which they paid out by Order of Court, to *Alexander Goodal*, named a Creditor in the said Answer of *Sir William Barker*; and also 124 *l.* 12 *s.* 2 *d.* paid to the said *Goodal* by the Appellant making together 425 *l.* and 86 *l.* 13 *s.* 11. paid to *Richard Nutley* in Discharge of the Bond Debt, due to *John Ryly* from the said *Sir William*, and in his Answer mentioned. And the Appellant paid 3031 *l.* to the said *Darby Egan* for the use of *Sir William Barker*, pursuant to the aforesaid Power; but is only allowed 204 *l.* 4 *s.* 4 *d.* part thereof, which was paid by *Sir William* to *Mrs. Mary Roberts*, and his Lordship ordered the Appellant to be charged with Interest in the Life-time of the said late *Sir William*, for all the Surplus of the purchase Money, reported to remain in the Appellant's Hands, though the Respondent was not intitled to any thing untill after his late Fathers Death, nor is he Executor or Administrator of the said *Sir William Barker*.

By which Report, and the Orders, and Proceedings of the Court of Chancery of *Ireland*, Subsequent to your Lordships said Order in 1724, the Appellant conceives himself much Agrieved, and hath humbly appealed therefrom to your Lordships, and hopes your Lordships will be pleased to Order that the Appellant shall have an Allowance for the several Sums of Money really and *bona fide* by him paid, pursuant to the several Orders of the Court of Chancery of *Ireland*, in part of his purchase Money: And that he shall be allowed Interest for such of the said Sums as were by him so paid before the 4th Day of July 1717, the time he was let into Possession of the Premises in Question. And that the Appellant shall not be charged with Interest for the Surplus of the said Purchase Money, during the Life of the said *Sir William Barker*, (amongst others) for the following Reasons.

R E A S O N S.

First, BECAUSE the Appellant became a Purchaser under the Decrees of the said Court so affirmed by your Lordship's in 1714. And hath fairly paid his Money in Pursuance of Orders made by that Court, Subsequent to your Lordship's Affirmance, to which Orders he was bound to pay Obedience, and could no way Controvert; the same, and the several Sums so by him paid were applied in Discharge of the 7000 *l.* Debts of the late *Sir William Barker* mentioned in his Answer, and of the Interest afterwards accruing, due thereon which were Decreed to be paid, and part of the Money disallowed to the Appellant, by the said Order Appealed from, was paid out of the Deposit made by the Appellant in the Hands of the said Masters, who sold the said Estate; while the same was more immediately under the Direction of the Court, who issued out the same, and therefore the Appellant humbly conceives, that he ought to have had an Allowance for the several Sums by him paid in Discharge of the Debts of the said *Sir William Barker*, by Virtue of, and under the Authority of the Orders of the said Court.

Secondly, BECAUSE the Appellant paid the said Sum of 1000 *l.* and other Sums of Money for a Considerable time, before he was let into Possession of the Premises in Question, *viz.* The Appellant paid the said 1000 *l.* the 27th Day of July 1715, and was not let into Possession till the 4th Day of July 1717, till which time he received no Benefit or Advantage: And in regard he is to pay Interest for the Surplus of the Purchase Money, therefore hopes that he shall have Interest, likewise for the several Sums which were by him advanced, before he was so let into Possession.

P. YORKE.

C. TALBOT.

Appellant has requested
from the Report, and
Order made for con-
firming the same.

To be heard at the Bar of the House
of LORDS the Day of May
1728.

Thomas Iewers Esq; Appellant.
Sir William Barker Bart. Respondent.